

(1981) 06 KAR CK 0002
In the Karnataka High Court
Case No : WP. 3691/78

Shivaputrappa S. Umadi and Others

APPELLANT

Vs

Rabkavi Banahatti Municipality and Another

RESPONDENT

Date of Decision : 08-06-1981

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 94

Citation : (1981) 2 KarLJ 386

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

The Court made the following:

In this petition, the six petitioners who are dealers in tea in the town of Rabkavi Banahatti, in Bijapur District, have challenged the validity of the Notification issued by the first respondent-Municipality of the aforementioned Town, dated 14th July, 1977 under S. 95(b) of the Karnataka Municipalities Act, 1964 and subsequent sanction given by the Government as per Government Order dater 17-1-1978 published in the Gazette dated 16-2-1978 (Ext. "B").

2. The facts are not in dispute. The notification issued under S. 95(b) of the Act is produced at Ext.-A to the petition and the Government sanction at Ext.-B. The petitioners feel aggrieved by the Notification at Ext.-A inasmuch as the same is not in conformity with what the Municipality is required to do under S. 95(1) of the Act, inasmuch as there is no indication of the rates prevalent for the various commodities listed in the Notification of the first respondent Municipality so that the petitioners and others like them who were going to be affected by the proposal of levy of octroi would have been in a better position to file their objections which were called for in terms of the notification. Secondly, it has been urged that the Municipality acted in abdication of its own powers in choosing to tax all the items of articles to be found in Schedule II to the Act instead of applying its mind and selecting only such articles which were likely to come into the town limits of the first respondent Municipality. It is therefore argued that the action of the Municipality has been arbitrary and liable to be

struck down.

3. It is difficult to accede to either of the two contentions stated above. S. 95 (a) (b) of the Karnataka Municipalities Act reads as follows:

95. Procedure preliminary to imposing tax-A Municipal council before imposing a tax shall observe the following preliminary procedure:

(a) It shall, by resolution passed at a meeting, select for the purpose one or other of the taxes specified in section 94 and in such resolution specify so far as may be applicable- (i) the classes of persons or of property of of both which the Municipal council proposes to make liable, and any exemptions which it proposes to make;

(ii) the amount of rate at which the municipal council proposes to assess each such class;

(b) When such resolution has been passed, the municipal council shall publish in the prescribed manner a notice of such resolution in the prescribed form.

As is apparent from the language of S. 95(a), the resolution must be passed at a general meeting of the Municipal Council to impose one or other taxes mentioned in S. 94 of the Act. Such a resolution should specify as far as possible the classes of persons or of property or both who are liable to pay the tax as well as others who are liable to get exemption from such liability. It must further specify the rate at which the Municipal Council proposes to assess such classes if any and further where it relates to levy of octroi, it must specify the octroi stations in the limits of the town. If those ingredients are to be found in the notification, then, it cannot be complained that it is violative of S. 95. Therefore, the mandate under sub-sec. (b) of S. 95 that the notice of the resolution must be in the prescribed form is indicative of substantial compliance with the prescribed form specifying the requirement of sub-sec. (a) and no more. This is also the view expressed by the Full Bench of this Court in the case of *Kasturiranga Iyengar v. Town Municipal Council, Hassan*, (1975) 2 Kar.L.J. 333 FB. It has been held therein that if such a notification contains all the particulars referred to in clauses (i) to (iii) of S. 95 (a) as far as may be there is compliance with the requirement of law. In the instant case, Ext-A issued by the Chief Officer of the first respondent satisfies all requirements of S. 95. Classees of persons or property liable is indicated. Proposed exemptions are indicated. The rate at which items in Schedule II of the Act are levied octroi is also indicated in column No. 3. Octroi stations numbering 12 have also been indicated. I, therefore, do not see any such infirmity in the notification as was attempted to be pointed out by the learned counsel for the petitioners. Therefore, the first argument must fail.

4. The second contention advanced should not detain me long having regard to the language of S. 94(1)(b) which is as follows:

94. Taxes which may be imposed.-(1) Subject to the general or special orders of the Government, a municipal council.

(a) ** ** **

(b) with the sanction of the Government and at rates not exceeding those specified in Schedules I, II, III, IV, VI and VII may levy any one or more of the following taxes:

(i) a tax on buildings or lands or both situated within the municipality;

(ii) an octroi, on goods specified in Schedule II entering the municipal limits for consumption, use or sale therein;

(Sub-sec. (b) (ii) of S. 94(1) has since been deleted in view of the abolition of Octroi in the State).

5. It is clear from the language of sub-sec. 94(1)(b)(ii) which is the source of power for the first respondent Municipal Council to levy octroi, that the Municipal Council may so levy octroi to any of the goods specified in Schedule II. Any of the goods in the context should also be read as on all the goods mentioned in Schedule II. From this, it necessarily follows that the Municipal Council has no power to levy octroi on items of goods which are not mentioned in Schedule II. If that is so, any such conferment of power is positive and limitation on that power is expressed by implication. I, therefore, do not see any impediment for the Municipal Council to adopt all the items of goods in Schedule II and such adoption cannot be said to be without the application of mind merely because they have chosen to tax all the goods specified in Schedule II.

6. For the reasons stated above, there is no merit in this writ petition which has been heard after notice to the respondents who have entered appearance.

7. In the result, it is unnecessary to issue rule nisi in this petition and as such, it is dismissed.